

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 107 OF 2024**

DISTRICT : MUMBAI

Shri Bharat Kisan Gangawane,)
Occ-Service,)
R/o: Indira Nagar, Room No. 2,)
O.T Section-4, Ulhasnagar,)
Thane 421 004.)**...Applicant**

Versus

1. The State of Maharashtra)
 Through Principal Secretary,)
 Home Department, Mantralaya)
 Mumbai 400 032.)
2. M.P.S.C,)
 Through Secretary,)
 Trishul Gold Field, Plot No. 34,))
 Sector-11, Opp. Sarovar Vihar,))
 Belapur CBD,)
 Navi Mumbai-400 614)
3. Aditya Anil Bamane,)
 Occ-Service,)
 Add: Rajavi Jadhav Nagar,)
 Near Bus Stop,)
 Next to Sneh Clinic,)
 Uttur Ajra 416 220.)

4. Markad Balu Digambar,)
Occ-Service,)
R/o: At Markad Wadi,)
PO Phondshirars,)
Malshiras 413 109.)
5. Maske Shriram Kuberrao,)
Occ-Service,)
R/o: Sighania Nagar,)
Arni Road,)
Yavatmal (R) (CT) 445 001.)
6. Pagore Rupesh Dilip,)
Occ-Service,)
R/o: New TV Centre, Ramnagar)
Mehkar 443 301.)
7. Kokare Purushottam Dadaso,)
Occ-Service,)
R/o: B-19, Phaltan Dahiwadi Rd))
Annai Niwas, Ajit Nagar,)
Near Jeet Hotel 415523.)
Current add: Flat No. A/104,)
Binawant Pradise,)
Bhekraingar, Fursingi,)
Hadapsar, Ajitnagar Kolki,)
Near Bhekraimata Mandir,)
Fursungi, Haveli – 421 308.)
8. Naukudkar Snehal Vilas,)
Occ-Service,)
R/o: At Teginhal,)
Post Mungurwadi, Naukudkar)
Niavas Mahagaon Road,)
Naukudkar Colony, Teginhal,)
Gadhilaj – 416 503.)

9. Persons with Disabilities)
Welfare Department,)
Government of Maharashtra,)
Mantralaya, Mumbai 400 032.)
10. General Administration Dept,)
Government of Maharashtra,)
Through Addl. Chief Secretary,)
Mantralaya, Mumbai 400 032.)
11. Public Health Department,)
Government of Maharashtra,)
Through Addl. Chief Secretary,)
10th floor, G.T Hospital Complex)
Mumbai 400 001.)...**Respondents**

Shri A.A Gharte, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents No 1 to 3.

Shri M.D Lonkar, learned counsel for Respondent Nos 4 & 6.

**CORAM : Justice Mridula Bhatkar (Chairperson)
Shri Debashish Chakrabarty (Member) (A)**

RESERVED ON : 14.03.2024

PRONOUNCED ON : 28.03.2024

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. Though the matter was fixed for arguments on interim relief, the matter is argued on the main issue extensively therefore by consent it is heard and decided finally.

2. In this matter the understanding and interpretation of sub section 'e' of Section 34 of The Rights of Persons with Disabilities Act, 2016 is involved. (hereinafter referred as The Act for brevity). In order to have quick grasp the entire Section 34 of The Act, is reproduced in the beginning as under:-

“Section 34

(1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:

(a) blindness and low vision;

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities;

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications

exempt any Government establishment from the provisions of this section.

(2)

(3)”

3. Learned counsel for the applicant prays that this Tribunal be pleased to declare that only those persons with Multiple Disabilities/Mental illness as defined under Government Resolution 29.5.2019 issued by State of Maharashtra i.e., clauses (a) to (d) read with Section 34(1) of The Act coupled with deaf-blindness/Mental illness etc., are eligible for appointment / participation under the Advertisement No. 99/2022 for the reserved category of Mental illness/Multiple Disabilities. It is prayed that Tribunal to direct the Respondent No. 1 and 2 to re-verify the Disability Certificate of Select Waiting List candidates strictly in accordance with G.R 29.5.2019 read with The Act. Further the Tribunal be pleased to quash and set aside the impugned General Merit List dated 18.1.2024 published by Respondent No. 2, vide Advertisement No. 99/2022 as it violates the provisions of Section 34(1) of the Rights of Persons with Disabilities Act 2016 read with G.R dated 29.5.2019 issued by State of Maharashtra.

4. Pursuant to the advertisement dated 11.5.2022 for the Preliminary Examination issued by Respondent No. 2, M.P.S.C for appointment to Multi Cadre posts for the State Services Preliminary Examination-2022, the applicant has applied for the Multi Cadre posts under the category of Mental Illness/Multiple Disabilities of Clause ‘d’ and ‘e’ of Section 34(1) of The Act, which was conducted from 21st to 23rd January, 2023. Thereafter, Respondent No. 2, M.P.S.C published advertisement dated 11.11.2022 for the Staff Services Main Examination-2022. The

applicant submits that he has applied for the post of Deputy Collector, Group-A and also Assistant State Tax Commissioner, wherein a post was reserved under 4% reservation for The Rights of Persons with Disability Act, 2016, amended as per 2020 Act.

5. Learned counsel for the applicant submits that it is the case of the applicant that he is a person with permanent disability of 45% (Mental illness and OCD with Depression). Learned counsel has further submitted that the Respondents have misinterpreted Section 34 (e) wherein the persons of Multiple Disabilities are described. Learned counsel submitted that a person who seeks reservation under Section 34(e) should be necessarily deaf-blind plus with one of the Disabilities mentioned in sub clauses (a) to (d). Learned counsel for the applicant has further submitted that none of the private Respondents who are selected under Section 34(e) in the category of Multiple Disabilities, possesses benchmarked Multiple Disability hence are not in fact disabled as the necessary disability deaf-blindness is absent. Learned counsel has submitted that a person should be only blind or only deaf as mentioned under Section 34(a) & (b), but a person should be “deaf-blind’ under sub section ‘e’ of Section 34 of the Act. Learned counsel submitted that these two words deaf-blind have joined with hyphen thereby forming one word deaf-blind. Thus, the person should be deaf as well as blind and plus should possess one more disability under Section 34(a) to (d) as contemplated under Section 34(e) of the Act. In support of his submissions, he relied on the advertisement dated 11.11.2022 for the said post. He also submitted that all the candidates above the applicant in the merit list except one, are not eligible for applying in the category of Multiple Disabilities. Learned counsel for the applicant has produced the Chart for the same.

Sr No.	Merit No.	Name of Candidate	Disability	Reason for ineligibility
1.	1763	Snehal Vilas	Muscular Dystrophy All four limb -	Not eligible

		Naukudkar	45% Hearing Impairment – Right ear-20% Muscular Dystrophy – All four limb – 50% Hearing impairment -Right ear- 25%	Absence of Blindness
2.	1784	Rupesh Dilip Pagore	Hearing Impairment – both ears – 15% RE HMCH LE 6/18P-40%	Not eligible Absence for other disabilities from Sec 34(a) to (d)
3.	1795	Aditya Anil Bamane	Muscular Dystrophy – m – 50% Locomotor disability – both lower limb- 50% Low vision – Left eye – 30%	Not eligible Absence of Deafness
4.	1805	Balu Digambar Markad	Hearing Impairment – Both ears – 35% Low Vision – Both eye – 20%	Not eligible Absence of other disabilities from Sec 34(a) to (d)
5.	1806	Shriram Kuberrao Maske	Locomotor Disability – Both legs – 45% Low vision Both eyes – 30%	Not eligible Absence of Deafness
6.	1813	Sachin Vasant Jadhav	Hearing Impairment – Both Ear-23% Low vision – Both eyes – 40% Thalassemia-Blood-70%	Eligible
7.	1816	Manoj Maruti Bhogate	Locomotor Disability – 20% Low vision Left eye – 30%	Not eligible Absence of Deafness
8.	1821	Girish Kacharu Aware	Intellectual Disability – Brain-75% Locomotor Disability – Bilateral UL and LL-18%	Not eligible Absence of Blindness/Deafness & other disabilities from Sec 34(a) to (d)
9.	1823	Avinash Sudhakar Shinde	Multiple Disability – Lt. L/L – 10% Short Stature/Dwarfism-whole body- 72%	Not eligible Absence of Blindness/Deafness & other disabilities from Sec 34(a) to (d)

6. Learned counsel for the applicant relied on Para 5 of the Schedule of the Act regarding specified Disability wherein Multiple Disabilities are explained as under:-

“5. Multiple Disabilities (more than one of the above specified disabilities) including deaf blindness which means a condition in which a person may have combination of hearing and visual impairments causing severe communication, developmental and educational problem.”

7. Learned counsel for the applicant relied on the ratio laid down by the Hon’ble Supreme Court in the case of Rajneesh Kumar Pandey Vs. Union of India, W.P (Civil) No. 132/2016 dated 28.10.2021. He also relied on the judgment of the Hon’ble Bombay High Court dated 6.12.2021 in W.P No. 7283/2021, Sunita Rajendre Apte Vs. State of Maharashtra & Ors.

8. Learned C.P.O while opposing the Original Application has submitted that the selection of the candidates under Multiple Disability or any Disability under Section 34 (d) & (e) is correctly done and it is legal. Learned C.P.O relied on the short affidavit in reply dated 25.2.2024 filed on behalf of Respondent No. 2, through Sushma Suhas Chandramore, Under Secretary in the office of Secretary, M.P.S.C. Learned C.P.O has submitted that issuance of the Certificate of Multiple Disability is related with State of Maharashtra and once the Certificate of Multiple Disability is issued by the Government of Maharashtra and placed before M.P.S.C, that cannot be objected as it is a matter of expertise. The candidature of all the private Respondents are thus were found correct and valid. Learned C.P.O submitted that M.P.S.C has also sought clarification from G.A.D by letter dated 6.2.2024 about the said G.R dated 29.5.2019. Learned C.P.O further submitted that there is a mistake committed by G.A.D in the G.R while translating Sec 34(e) of the Act as the term 'deaf-blind' was not correctly understood. Learned C.P.O further submitted that she be allowed to invite some Expert on the point of 'deaf-blind' disability to explain the nature of Disability.

9. Section 34(e) of the Act provides the reservation to the persons having Multiple Disabilities, as a separate class. After reading sub clause (e) of Section 34 of the Act, by way of applying the Golden Rule of interpretation of Statute, it reveals that under this class the persons having disability under clause (a) to (d) including deaf-blind are covered under sub section (e) of Section 34 of the Act. The word 'including' used before deaf-blindness does not mean that deaf-blindness necessarily be a common factor and should go along with one of the Disabilities described under sub-section (a) to (d) of Section 34 of the Act. Though, deaf-blindness is not mentioned in sub section (a) to (d), it is

included as one of the Disabilities under Multiple Disabilities. Section 34(a) is about blindness and low vision and Section 34(b) is about deaf and hard hearing. But in in Section 34 of the Act 'deaf-blindness' is itself a type of the disability which is a combination of lowering functional ability of two organs, i.e., eyes and ears at different degrees. The inclusion of the disabilities while defining Multiple Disabilities in sub section (e) of Section 34 of the Act is not inclusive but is restricted to the disabilities which are described in the Chapter Clause 41 of the guidelines.

10. In the case of **Rajneesh Kumar Pandey (supra)**, the Hon'ble Supreme Court addressed the issue of Child Student ratio in the Schools where the children of benchmark disabilities are studying. They specified different ratio for different disabilities for e.g. accepted pupil teacher ratio of 1:8 for children with Cerebral Palsy, Visual Impairment and Hearing Impairment, 1:5 for children with intellectual disability and 1:2 for Deaf-Blind and a combination of two or more of the seven disabilities mentioned above. The ratio laid down by the Hon'ble Supreme Court is not helpful to the case of the applicant.

11. In the case of **Sunita R Apte (supra)**, the Petitioner has challenged the order of transfer on the ground that her 14 year old son is a special child and he is having multiple disabilities including Deaf Blindness and Autism Spectrum Disorder with borderline Intellectual Disability. The submission of the learned counsel for the applicant that in this order the Hon'ble High Court has held that Deaf Blindness and one of the disabilities as mentioned in Section 34(a) to (d) can be called as Multiple Disabilities is not only farfetched but absurd submission. In this case, the Division Bench has not at all dealt with what is meant by

Multiple Disabilities. So this judgment is of no use to the applicant.

12. Considering the Disability Act being special legislation, with a view to understand the nuances of the Multiple Disabilities, we found it necessary to get the assistance of a Doctor in the field as an expert to understand type of disability namely “deaf-blind”. Dr Shrinivas Chavan, HOD-ENT Department, Sir J.J Hospital, Mumbai, on our request was present at the time of hearing of this matter and he clarified and explained what is meant by Multiple Disability and the meaning of the term ‘deaf-blind’. Clause No. 40 of Part-VIII pertains to Multiple Disabilities and how the percentage of Multiple Disabilities is to be computed mathematically was demonstrated. We now cull out the points from the able assistance given by him as follows:-

(i) A person who seeks reservation under the Disabilities Act should be a person with benchmark disability which is defined in Section 2(r), i.e., not less than 40% of the Disability specified in Schedule of the Act.

(ii) The guidelines issued for the purpose of assessing the extent of Specified Disability in a person included under the Rights of Persons with Disability Act, 2016 are also required to be looked into. These guidelines provide in detail the principles of evaluation of range of motion (ROM of Joints), principles of evaluation of strength, coordinated activities and so also the components of different limbs. It also considered the mobility component, traumatic, non-traumatic lesions.

(iii) ‘Hard of Hearing’ (HH) is the mild version of deafness, which ranges from 60 to 70 dBHL in better ear and which corresponds to

approximately 40-64% 'Hearing Disability'. Deaf is the severe version of 'deafness' which ranges from dBHL and above in better ear and corresponds to hearing disability of approximately 65% to 100%. Persons having less than 60 dBHL hearing loss in better ear, thus not considered to be disabled, as 40% disability is the benchmark as per PWD Act.

(iv) It is entirely possible that the person will retain some useful vision and hearing however loss vision and hearing does not have and additive but multiplicative effect hence the use of the term 'Deaf blind'.

13. We need to refer to 'Combining Formula' for better understanding i.e. $a+b(90-a)$ for arriving at the 'Total Percentage' of Multiple Disabilities which can arise from any of the set of impairment even if individually below the threshold of 40% for Benchmark Disabilities as brought out in 'Example' cited in Para 40.2.2:-

"For example, if the percentage of hearing disability is 30% and visual disability is 20%, then by applying the combining formula given above, the total percentage of multiple disabilities will be calculated as follows:-

$$30 + \frac{20(90-30)}{90} = 43\%$$

14. The Disability Certificate for 'Multiple Disabilities' are certified by 'Medical Authority' designated under Para 41, which reads as follows:-

"41. Medical Authority.

The certification medical authority for certifying multiple disability shall comprise of the following:-

- (a) The Medical Superintendent or Chief Medical Officer or Civil Surgeon or any other equivalent authority as notified by the State Government-Chairperson.
- (b) Specialist required for assessing the disabilities as per the requirement of respective guidelines.”

Thus, as prayed by applicants ‘Disability Certificates’ of ‘Multiple Disabilities’ cannot be re-verified by the Respondents including MPSC and Persons with Disabilities Welfare Department.

15. Thus, it is very clear that deaf-blindness is not a 100% deaf or 100% blind, but there is a degree of deafness and blindness. Though it may appear that deaf-blind are two different disabilities, but it is one form of disability which falls under one of the types of Multiple Disabilities.

16. Learned C.P.O submitted that the Respondents have followed this Schedule and Method. The applicant is unable to prove his case and we find no merit in the Original Application. As the prayer for interim relief is rejected, the Original Application accordingly stands dismissed.

Sd/-
(Debashish Chakrabarty)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 28.03.2024
Dictation taken by : A.K. Nair.